

REMARKS

Please note the fact that May 28, 2007, fell on a Federal Holiday (Labor Day) ensures that this paper is timely filed as of today, Tuesday, May 29, 2007 (the next succeeding day which is not a Saturday or Sunday).

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejection present in the outstanding Office Action in light of the following remarks.

It should be noted amendments made herein are not in acquiescence of the Office's position on allowability of the claims, but merely to expedite prosecution, and that Applicants specifically state that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Preliminary Matters

Figure 1 of the drawings has been amended to remove reference numeral 130, as requested in the Office Action.

The specification has been amended to incorporate the serial numbers of the referenced applications and to correct the typographical errors noted therein. Applicants acknowledge the outstanding Office Action asserts the presence of various trademarks in the application. Applicants, however, believe any use of trademarks in the present

application respects the proprietary nature of any marks and do not believe any changes thereto are required.

A number of claims are objected to because of asserted informalities. In order to expedite prosecution, Applicants have amended Claims 1, 4, 5, 7, 8, 21, 24, 25, 27, 28, and 41 to address the asserted informalities. Applicants, however, traverse the objection to Claim 16. It is respectfully submitted the phrase "further comprising the steps of" is appropriate for a claim depending from a method claim which adds additional elements.

Claims 10, 20, 30, and 40 stand rejected under Section 112, second paragraph. The claims have been amended to obviate this rejection.

The Rejections

Claims 1-41 were pending in the instant application at the time of the outstanding Office Action. Of these claims, Claims 1, 21, and 41 are independent claims; the remaining claims are dependent claims. Claims 21-40 stand rejected under 35 USC § 101 as being non-statutory. Claims 1, 2, 4-8, 11, 16-22, 24-28, 31 and 36-41 stand rejected under 35 USC § 102(b) as being anticipated by Taylor (U.S. Patent No. 5,721,824). Claims 3, 9, 10, 23, 29 and 30 stand rejected under 35 USC § 103(a) as being obvious over Taylor in view of Cockx et al. (U.S. Patent No. 6,952,825). Claims 12-15 and 32-35 stand rejected under 35 USC § 103(a) as obvious over Taylor in view of O'Toole et al. (U.S. Patent No. 6,345,294). Reconsideration and withdrawal of these rejections is respectfully requested.

The Section 101 Rejections

Claims 21-40 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Applicants respectfully traverse the rejection of the claims under Section 101, but have amended independent claim 21 to further emphasize it is directed to statutory subject matter. Independent claim 21 has been amended to recite, *inter alia*, the following limitations: "a processor; and a memory storing code accessible by the processor to:". Support for these amendments can be found in the Specification at page 34 lines 6-14.

Applicants respectfully submit that the amendment to claim 21 does not constitute new subject matter. Reconsideration and withdrawal of the rejection of claims 21-40 under 35 U.S.C. § 101 is respectfully requested.

The above Remarks notwithstanding the Applicants recognize and understand the focus of the Patent Office on ensuring that claims meet the statutory requirements of Section 101. To that end, should the Examiner, upon re-evaluation of the current rejection in light of the foregoing Remarks, deem that a rejection under 35 U.S.C. § 101 is still proper; Applicants and their undersigned representative kindly request the courtesy of a Telephone Interview so that an agreement may be reached as to how the claims might be amended in order to satisfy Section 101 before the issuance of a Final Rejection.

The Section 102(b) Rejections

Claims 1, 2, 4-8, 11, 16-22, 24-28, 31 and 36-41 stand rejected under 35 USC § 102(b) as being anticipated by Taylor (U.S. Patent No. 5,721,824).

As best understood, Taylor appears to be directed to installation of a multi-package distribution software pack. (Abstract) In particular, the installation of the multi-package software pack is spilt into installation of each dominant package and secondary packages dependent upon that dominant package. (*Id.*) The dependent packages of the multi-package distribution pack are installed before or after installation of the dominant package depending on the constraints of the target system. (*Id.*) The installation may be done either to a server in a distributing processing system having a server and multiple clients or to a stand alone computer. (Col. 1, lines 6-15)

Various U.S. Patents which appear to deal with similar issues as Taylor are discussed in the present specification. As stated therein,

Techniques for electronic software distribution of whole program packages [US6009525] [US5721824] or updates/corrections/fixes/patches [US5999740] [US5805891] [US5953533] are, **by definition, restricted to the distribution/deployment/installation of (one or many at a time) physical software packages and do not take the runtime stages of applications into account. In addition, they deal with one system at a time and do not take the cross-system aspects of applications and services into account.**

(Page 4, lines 13-18; emphasis added)

Determining the order in which software is installed on a single machine (either a server in a distributed network or a stand alone computer), e.g., one system at a time, stands in stark contrast to the present invention. As discussed in the specification, the present invention relates implementing changes for hardware, software, network and storage systems in **large-scale** eBusiness environments. (Page 1, lines 9-10; emphasis added) As noted therein, the identification and tracking of relationships between components of

distributed systems is becoming increasingly important for change management. Applying a change to one artifact affects other artifacts, i.e., artifacts have dependencies on other artifacts. Such dependencies exist between the components of different artifacts on a single system and also between artifacts and organizational domains. (Page 2, lines 5-10) Examples include changing the schema of a database table in a running application and installing a new release of a web application server in a multi-tiered eCommerce system. An important observation is that many changes are not explicitly included in the RFC. Rather, they are merely implied. For example, applications must be recompiled if they use a database table whose schema is to change. Such implicit changes are a result of various kinds of relationships, such as service dependencies and resource sharing. (Page 9, lines 5-10)

Independent Claim 1 as currently written states "[a] method of determining an allowable order of changes in a distributed system, the method comprising ... determining existing relationship descriptions between components of the distributed system". (emphasis added) Similar language appears in the other independent claims.

It is respectfully submitted that Taylor, clearly falls short of present invention (as defined by the independent claims) in that, *inter alia*, it does not disclose "determining existing relationship descriptions between components of [a] distributed system". At best, Taylor appears to merely teach determining the dominant/dependant packages within a multi-package software distribution pack. Accordingly, Applicants respectfully submit that the applied art does not anticipate the present invention because, at the very least, "[a]nticipation requires the disclosure in a single prior art reference of each element of the

claim under construction.” *W.L. Gore & Associates, Inc. v. Garlock*, 721 F.2d 1540, 1554 (Fed. Cir. 1983); *see also In re Marshall*, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

The Section 103(a) Rejections

Claims 3, 9, 10, 23, 29 and 30 stand rejected under 35 USC § 103(a) as obvious over Taylor in view of Cockx et al. Specifically the Office asserted that “[i]t would have been obvious ... to incorporate the teaching of Cockx et al. into the teaching of Taylor to include wherein the order of changes is concurrent [Claims 3 and 23;] wherein the order of changes includes an estimate of the time required to complete a change [Claims 9 and 19; and] wherein the total change time is minimized by exploiting parallelism between change tasks [Claims 10 and 30]”.

Claims 12-15 and 32-35 stand rejected under 35 USC § 103(a) as obvious over Taylor in view of O'Toole et al. Specifically the Office asserted that “[i]t would have been obvious ... to incorporate the teaching of O'Toole et al. into the teaching of Taylor to include wherein a requester identifies one or more target systems within the distributed system by name [Claims 12 and 32;] wherein the names of the target systems are unique physical identifiers [Claims 13 and 33;] wherein the names of the target systems are logical names which refer to one or more physical systems [Claims 14 and 34;] wherein a requester does not identify one or more target system within the distributed system by name [Claims 15 and 35]”.

Reconsideration and withdrawal of the present rejections are hereby respectfully requested.

A 35 USC 103(a) rejection requires that the combined cited references provide both the motivation to combine the references and an expectation of success. As discussed above with respect to Taylor, not only is there no motivation to combine the references, no expectation of success, but actually combining the references would not produce the claimed invention. Thus, the claimed invention is patentable over the combined references and the state of the art.

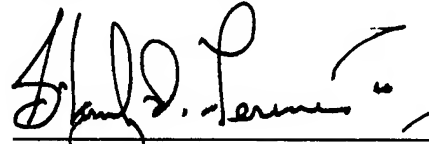
Conclusion

In view of the foregoing, it is respectfully submitted that Independent Claims 1, 21, and 41 are in condition for allowance. By virtue of dependence from what are believed to be allowable Independent Claims 1, 21 and 41, it is respectfully submitted that Claims 2-20 and 22-40 are also presently allowable. Notice to the effect is hereby earnestly solicited.

The "prior art made of record" has been reviewed. Applicants acknowledge that such prior art was not deemed by the Office to be sufficiently relevant as to have been applied against the claims of the instant application. To the extent that the Office may apply such prior art against the claims in the future, Applicants will be fully prepared to respond thereto.

In summary, it is respectfully submitted that the instant application, including Claims 1-41, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley D. Ference III", written over a horizontal line.

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Attachment - Replacement drawing (Fig. 1)

Amendments to the Drawings:

The attached sheet of drawings includes changes to Fig. 1. This sheet, which includes Fig. 1, replaces the original sheet including Fig. 1. In Figure 1, reference numeral 130 has been removed as requested in the outstanding Office Action.